IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 239 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE K.J.VAIDYA
and
Hon'ble MR.JUSTICE M.H.KADRI

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

STATE OF GUJARAT
Versus
HARIJAN KANTI NATHABHAI

Appearance:
Mr.J.A.Shelat, APP for the appellant.

MR KR RAVAL for Respondent-Accused.

CORAM : MR.JUSTICE K.J.VAIDYA and
MR.JUSTICE M.H.KADRI
Date of decision: 20/03/96

ORAL JUDGMENT (per KADRI,J.)

This appeal arises out of the judgment and order dated 8.1.1992, passed by the learned Addl. Sessions Judge, Junagadh in Sessions Case No. 80 of l991, wherein the respondent-accused having been charged for the offences punishable under Ss.376, 302 and 201 of the I.P.Code was, at the end of the trial, acquitted of the said charges. The prosecution case, in nutshell, be stated as under :

2. P.W. 5 Hirbai Pujabhai, who is the widow of Pujabhai, alongwith her son Ashok and daughter Harsha aged 7, was residing at Village Vadasada in Junagadh District. On 30.1.1991, at about 7.00 p.m., minor girl Harsha was found missing. Frantic search was made by the mother and other relatives of Harsha to find out her, but in vain. On 1.2.1991, the dead body of Harsha was found floating in the well at Avedawala, which is situated in the outskirts of Village Vadasada. The information was lodged at the Manavadar Police Station. Dead body of Harsha was taken out from the well and the inquest panchnama was prepared. Thereafter PW 14 - PSI I.N.Jadeja took over the investigation and prepared the panchnama of the scene of offence, and sent the dead body of Harsha for post mortem examination. The post mortem examination revealed that Harsha was at first raped and thereafter a wooden log was inserted in her vagina and because of the injuries she ultimately died and thereafter the dead body was thrown into the well. On 2.2.1991, the respondent-accused was arrested and thereafter statements of witnesses were recorded. On completion of the usual investigation, charge-sheet came to be filed against the respondent-accused before the learned JMFC, Manavadar. As the offences involved in the charge-sheet were exclusively triable by the Court of Sessions, the learned JMFC committed the case to the Court of Sessions at Junagadh to be tried in accordance with law. The case ultimately came to be registered as Sessions Case No. 80 of 1991 in the Court of the Sessions Judge at Junagadh.

3. Charge Exh.1 was framed against the accused by the learned Addl. Sessions Judge, Junagadh on 12.12.1991. In substance, the charge against the accused was that he had committed rape on minor girl Harsha aged about 7 and thereafter killed her by inserting wooden log into her vagina. In the charge it was also alleged that the accused, after killing Harsha, had thrown the dead body into the well so as to destroy the evidence against him.

4. The accused pleaded not guilty to the charge and claimed to be tried.

5. At the conclusion of the trial, the learned Addl.Sessions Judge was pleased by his judgment and order dated 8.1.1992 to acquit the accused, as stated above. The State has challenged the judgment and order of acquittal by filing the present appeal.

6. Heard the learned APP Mr.J.A.Shelat for the appellant-State and learned Advocate Mr.K.R.Raval, for the respondent-accused.

7. It is an admitted fact that the prosecution case is solely based on circumstantial evidence. The first circumstance on which the prosecution has relied is that the respondent-accused was found with deceased Harsha in the evening of 30.1.1991. In this connection, the prosecution has relied upon the evidence of PW 4 Kishorekumar Pragjibhai, who is running a provision store in Village Vadasada. It is pertinent to note that the evidence of this witness is very doubtful as his statement was recorded by the Investigating Officer, after the accused was arrested on 2.2.1991. It is also pertinent to note that PW 4 had last seen the accused and deceased Harsha together on 30.1.1991. Inspite of that he did not disclose this fact to the mother of deceased Harsha or to any of her other relatives. Village Vadasada is a small Village, and the shop of PW 4 is situated just near the residence of PW 5, i.e. the mother of the deceased. The learned trial Judge has given cogent and convincing reasons for not accepting the evidence of PW 4 on the ground that he is not a natural witness, and his evidence is got up in order to create circumstance against the accused, on the ground that he was last seen with deceased Harsha.

8. The other circumstance on which the prosecution relied is that the clothes of the accused stained with semen and blood were seized from his house. PW 10, panch Bhanji Hirji had been examined to prove the panchnama which was prepared at the time of seizure of clothes of the accused. The prosecution has failed to establish beyond doubt that the clothes which were seized from the house of the accused were the clothes of the accused. In the house from which the clothes were seized, other family members of the accused were also residing. No evidence has been procured by the prosecution to prove that the clothes which were seized belonged to the accused. In the said house, the brother and the father

of the accused also resided. Therefore, it cannot be said that the clothes which were seized belonged to the accused. The learned trial Judge has, therefore, rightly held that the circumstance of seizure of the clothes which were smeared with semen and blood from the house of the accused, did not establish the guilt of the accused. We are of the opinion that the reasoning given by the learned trial Judge for not accepting this circumstance against the accused, is quite cogent and convincing.

9. The next circumstance on which the prosecution has relied is that the accused led the police and the panchas to the scene of offence. In this connection, the prosecution had examined PW 11 Ramnikbhai Bhurabhai, who acted as a panch in the preparation of the discovery panchnama of the scene of offence. It is said that this panchnama was prepared at the instance of the accused, and it was prepared by virtue of the provision of S.27 of the Indian Evidence Act. It is pertinent to note that before the accused had led the police and the panchas to the scene of offence, the Investigating agency had already seen that place. It is not proved that the accused while in police custody had made a voluntary statement in the presence of the panchas and as a result, the scene of offence was discovered. The prosecution has not proved that the accused had made any statement before the police, in the presence of the panchas that he wanted to show the place of incident. The learned trial Judge has rightly discarded the evidence regarding discovery of the place of incident at the instance of the accused. We do not find any infirmity in the reasoning of the learned trial Judge for discarding this piece of circumstance against the accused.

10. As stated above, the whole of the prosecution case entirely rests on circumstantial evidence. It needs hardly to be stated that in a case based on circumstantial evidence, the circumstances from which the conclusion of guilt is to be drawn have not only to be fully established but also that all the circumstances so established should be of a conclusive nature and consistent only with the hypothesis of the guilt of the accused. Those circumstances should not be capable of being explained by any other hypothesis, except the guilt of the accused and the chain of the evidence must be so complete as not to leave any reasonable ground for the belief consistent with the innocence of the accused. It needs no reminder that legally established circumstances and not merely indignation of the court can form the basis of conviction and the more serious the crime, the greater should be the care taken to scrutinise the

evidence lest suspicion takes the place of proof.

11. As a result of the foregoing discussion, we are of the view that the circumstances on which the prosecution has relied upon do not establish the guilt of the accused beyond reasonable doubt. We are therefore, of the opinion that no interference is called for by us in the present appeal, and it should be dismissed. Accordingly the appeal fails and is dismissed.

******